

AMENDED IN ASSEMBLY JUNE 2, 2010

AMENDED IN ASSEMBLY APRIL 28, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1844**

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**Introduced by Assembly Member Fletcher**

**(Principal coauthors: Assembly Members Anderson, Block, Garrick, Gilmore, Nielsen, and Salas)**

(Principal coauthors: Senators Hollingsworth and Wyland)

**(Coauthors: Assembly Members *Adams, Arambula, Bill Berryhill, Tom Berryhill, Blakeslee, Bradford, Caballero, Charles Calderon, Chesbro, Conway, Cook, Coto, Davis, De Leon, DeVore, Emmerson, Fong, Fuller, Gaines, Galgiani, Hagman, Hall, Harkey, Hill, Huber, Huffman, Jeffries, Knight, Logue, Miller, Nestande, Niello, Norby, Portantino, Silva, Smyth, Solorio, Audra Strickland, Swanson, Torlakson, Torres, Torrico, and Tran, and Villines*)**

(Coauthors: Senators *Cogdill, Correa, Cox, Denham, Dutton, Harman, Maldonado, and Runner*)

February 12, 2010

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An act to amend Sections 220, 264, 264.1, 286, 288, 288a, 289, 667.61, 3000, and 3000.1 of, and to add Section 647.9 to, the Penal Code, relating to sex crimes.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1844, as amended, Fletcher. Sex offenders: punishment: parole.

Under existing law, an assault with the intent to commit mayhem, rape, sodomy, oral copulation, or with the intent to commit, by force, rape, spousal rape, or sexual penetration in concert with another, is

punishable by imprisonment in the state prison for 2, 4, or 6 years, except as specified.

This bill would provide that an assault of a person under 18 years of age with the intent to commit rape, sodomy, oral copulation, or with the intent to commit, by force, rape, spousal rape, or sexual penetration in concert with another, would be punishable by imprisonment in state prison for 5, 7, or 9 years.

Under existing law, rape, sodomy accomplished against the victim's will, oral copulation accomplished against the victim's will, and sexual penetration accomplished against the victim's will is punishable by imprisonment in state prison for 3, 6, or 8 years. Rape, sodomy, and oral copulation committed in concert with another is punishable by imprisonment in the state prison for 5, 7, or 9 years.

This bill would provide that the punishment for these specified crimes upon a child who is under 14 years of age is punishable by imprisonment in state prison for 6, 12, or 16 years, and if committed upon a minor who is 14 years of age or older is punishable by imprisonment in state prison for 6, 9, or 11 years. This bill would provide that if these crimes are committed in concert with another person upon a child who is under 14 years of age they are punishable in state prison for 7, 13, or 17 years and if committed in concert upon a minor who is 14 years of age or older by imprisonment for 7, 10, or 12 years. By increasing the punishment for crimes, this bill would impose a state-mandated local program.

Under existing law, a person who commits an act of rape, rape or sexual penetration in concert, sodomy, oral copulation, or sexual penetration, when the act is committed upon a child who is under 14 years of age and 7 or more years younger than the person, is guilty of aggravated sexual assault of a child. Aggravated sexual assault of a child under these circumstances is punishable by imprisonment in state prison for 15 years to life.

This bill would provide that it does not preclude prosecution under this existing law.

Under existing law, a person who commits any lewd or lascivious act upon a child who is under 14 years of age by use of force or fear is guilty of a felony punishable by imprisonment in state prison for 3, 6, or 8 years.

This bill would increase the punishment for this crime to imprisonment in the state prison for 6, 12, or 16 years. By increasing the punishment for a crime, this bill would impose a state-mandated local program.

Under existing law, a person who commits any lewd or lascivious act upon a dependent person, as defined, by use of force or fear is guilty of a felony punishable by imprisonment in state prison for 3, 6, or 8 years.

This bill would increase the punishment for this crime to imprisonment in the state prison for 6, 9, or 11 years. By increasing the punishment for a crime, this bill would impose a state-mandated local program.

Existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, requires a person convicted of certain felonies under specified circumstances to be committed to prison for a term of years to life.

This bill would provide that these felonies committed under the above-specified circumstances upon a victim who is a child under 14 years of age shall be punished by imprisonment in state prison for life without the possibility of parole *if the offender is 18 years of age or older or 25 years to life if the offender is under 18 years of age*. This bill would add as a circumstance the infliction of ~~physical injury resulting in a traumatic condition~~ *bodily harm, as defined*, on a victim who is a child under 14 years of age to the list of specified circumstances that would result in ~~this imprisonment for life without parole~~.

This bill would provide that when rape, spousal rape, rape in concert, or sexual penetration, sodomy, or oral copulation committed against the victim's will are committed under specified circumstances, the punishment shall be imprisonment in state prison for 25 years to life, or if committed upon a person who is a child 14 years of age or older, for 25 years to life if committed under one of the specified circumstances, or for life without possibility of parole if committed under 2 or more of the specified circumstances.

Under existing law, a person convicted of certain felony sex offenses shall be committed to prison for a term of 15 years to life if during the commission of the felony the defendant inflicted great bodily injury on the victim.

This bill would change the required sentence to 25 years to life for this type of offense.

Existing law makes it unlawful for a person who is required to register as a sex offender to reside within 2,000 feet of a public or private school, or park where children regularly gather. Existing law also provides that any person required to register as a sex offender who comes into any school building or upon any school ground without lawful business and written permission is guilty of a misdemeanor.

This bill would make it a misdemeanor for a person who is required to register as a sex offender to enter any park where children regularly gather without written permission from either the person's parole agent, if the person is on parole, or the chief administrative officer of the park, if the person is not on parole.

Under existing law a prisoner is generally released on parole for a period not exceeding 3 years, except that inmates sentenced for certain enumerated violent felonies are released on parole for a period not exceeding 5 years.

This bill would change this period of parole for ~~certain~~ of these violent felons from a maximum of 5 years to a maximum of 10 years *or for the felon's life in specified circumstances*. This bill would impose lifetime parole on habitual sex offenders whose victims were under 14 years of age and on inmates sentenced for lewd or lascivious acts committed upon the body of a minor, continuous sexual abuse of a child, specified sexual conduct with a child 10 years of age or younger, other specified sexual offenses against a victim under 14 years of age, and aggravated sexual assault of a child.

Under existing law, the period of parole for an inmate who has received a life sentence for certain specified sex offenses is for a period not exceeding 10 years.

This bill would include in this category of parolees, inmates who have received a life sentence for kidnapping with intent to commit certain specified crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known as the Chelsea King
- 2 Child Predator Prevention Act of 2010.
- 3 SEC. 2. Section 220 of the Penal Code is amended to read:
- 4 220. (a) (1) Except as provided in subdivision (b), any person
- 5 who assaults another with intent to commit mayhem, rape, sodomy,
- 6 oral copulation, or any violation of Section 264.1, 288, or 289 shall

1 be punished by imprisonment in the state prison for two, four, or  
2 six years.

3 (2) Except as provided in subdivision (b), any person who  
4 assaults another person under 18 years of age with the intent to  
5 commit rape, sodomy, oral copulation, or any violation of Section  
6 264.1, 288, or 289 shall be punished by imprisonment in the state  
7 prison for five, seven, or nine years.

8 (b) Any person who, in the commission of a burglary of the first  
9 degree, as defined in subdivision (a) of Section 460, assaults  
10 another with intent to commit rape, sodomy, oral copulation, or  
11 any violation of Section 264.1, 288, or 289 shall be punished by  
12 imprisonment in the state prison for life with the possibility of  
13 parole.

14 SEC. 3. Section 264 of the Penal Code is amended to read:

15 264. (a) Except as provided in subdivision (c), rape, as defined  
16 in Section 261 or 262, is punishable by imprisonment in the state  
17 prison for three, six, or eight years.

18 (b) In addition to any punishment imposed under this section  
19 the judge may assess a fine not to exceed seventy dollars (\$70)  
20 against any person who violates Section 261 or 262 with the  
21 proceeds of this fine to be used in accordance with Section 1463.23.  
22 The court shall, however, take into consideration the defendant's  
23 ability to pay, and no defendant shall be denied probation because  
24 of his or her inability to pay the fine permitted under this  
25 subdivision.

26 (c) (1) Any person who commits rape in violation of paragraph  
27 (2) of subdivision (a) of Section 261 upon a child who is under 14  
28 years of age shall be punished by imprisonment in the state prison  
29 for 6, 12, or 16 years.

30 (2) Any person who commits rape in violation of paragraph (2)  
31 of subdivision (a) of Section 261 upon a minor who is 14 years of  
32 age or older shall be punished by imprisonment in the state prison  
33 for 6, 9, or 11 years.

34 (3) This subdivision does not preclude prosecution under Section  
35 269, Section 288.7, or any other provision of law.

36 SEC. 4. Section 264.1 of the Penal Code is amended to read:

37 264.1. (a) The provisions of Section 264 notwithstanding, in  
38 any case in which the defendant, voluntarily acting in concert with  
39 another person, by force or violence and against the will of the  
40 victim, committed an act described in Section 261, 262, or 289,

1 either personally or by aiding and abetting the other person, that  
2 fact shall be charged in the indictment or information and if found  
3 to be true by the jury, upon a jury trial, or if found to be true by  
4 the court, upon a court trial, or if admitted by the defendant, the  
5 defendant shall suffer confinement in the state prison for five,  
6 seven, or nine years.

7 (b) (1) If the victim of an offense described in subdivision (a)  
8 is a child who is under 14 years of age, the defendant shall be  
9 punished by imprisonment in the state prison for 7, 13, or 17 years.

10 (2) If the victim of an offense described in subdivision (a) is a  
11 minor who is 14 years of age or older, the defendant shall be  
12 punished by imprisonment in the state prison for 7, 10, or 12 years.

13 (3) This subdivision does not preclude prosecution under Section  
14 269, Section 288.7, or any other provision of law.

15 SEC. 5. Section 286 of the Penal Code is amended to read:

16 286. (a) Sodomy is sexual conduct consisting of contact  
17 between the penis of one person and the anus of another person.  
18 Any sexual penetration, however slight, is sufficient to complete  
19 the crime of sodomy.

20 (b) (1) Except as provided in Section 288, any person who  
21 participates in an act of sodomy with another person who is under  
22 18 years of age shall be punished by imprisonment in the state  
23 prison, or in a county jail for not more than one year.

24 (2) Except as provided in Section 288, any person over the age  
25 of 21 years who participates in an act of sodomy with another  
26 person who is under 16 years of age shall be guilty of a felony.

27 (c) (1) Any person who participates in an act of sodomy with  
28 another person who is under 14 years of age and more than 10  
29 years younger than he or she shall be punished by imprisonment  
30 in the state prison for three, six, or eight years.

31 (2) (A) Any person who commits an act of sodomy when the  
32 act is accomplished against the victim's will by means of force,  
33 violence, duress, menace, or fear of immediate and unlawful bodily  
34 injury on the victim or another person shall be punished by  
35 imprisonment in the state prison for three, six, or eight years.

36 (B) Any person who commits an act of sodomy with another  
37 person who is under 14 years of age when the act is accomplished  
38 against the victim's will by means of force, violence, duress,  
39 menace, or fear of immediate and unlawful bodily injury on the

1 victim or another person shall be punished by imprisonment in the  
2 state prison for 6, 12, or 16 years.

3 (C) Any person who commits an act of sodomy with another  
4 person who is a minor 14 years of age or older when the act is  
5 accomplished against the victim's will by means of force, violence,  
6 duress, menace, or fear of immediate and unlawful bodily injury  
7 on the victim or another person shall be punished by imprisonment  
8 in the state prison for 6, 9, or 11 years.

9 (D) This paragraph does not preclude prosecution under Section  
10 269, Section 288.7, or any other provision of law.

11 (3) Any person who commits an act of sodomy where the act  
12 is accomplished against the victim's will by threatening to retaliate  
13 in the future against the victim or any other person, and there is a  
14 reasonable possibility that the perpetrator will execute the threat,  
15 shall be punished by imprisonment in the state prison for three,  
16 six, or eight years.

17 (d) (1) Any person who, while voluntarily acting in concert  
18 with another person, either personally or aiding and abetting that  
19 other person, commits an act of sodomy when the act is  
20 accomplished against the victim's will by means of force or fear  
21 of immediate and unlawful bodily injury on the victim or another  
22 person or where the act is accomplished against the victim's will  
23 by threatening to retaliate in the future against the victim or any  
24 other person, and there is a reasonable possibility that the  
25 perpetrator will execute the threat, shall be punished by  
26 imprisonment in the state prison for five, seven, or nine years.

27 (2) Any person who, while voluntarily acting in concert with  
28 another person, either personally or aiding and abetting that other  
29 person, commits an act of sodomy upon a victim who is under 14  
30 years of age, when the act is accomplished against the victim's  
31 will by means of force or fear of immediate and unlawful bodily  
32 injury on the victim or another person, shall be punished by  
33 imprisonment in the state prison for 7, 13, or 17 years.

34 (3) Any person who, while voluntarily acting in concert with  
35 another person, either personally or aiding and abetting that other  
36 person, commits an act of sodomy upon a victim who is a minor  
37 14 years of age or older, when the act is accomplished against the  
38 victim's will by means of force or fear of immediate and unlawful  
39 bodily injury on the victim or another person, shall be punished  
40 by imprisonment in the state prison for 7, 10, or 12 years.

(4) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person



1 committing the act, and both the defendant and the victim are at  
2 the time confined in a state hospital for the care and treatment of  
3 the mentally disordered or in any other public or private facility  
4 for the care and treatment of the mentally disordered approved by  
5 a county mental health director, shall be punished by imprisonment  
6 in the state prison, or in a county jail for not more than one year.  
7 Notwithstanding the existence of a conservatorship pursuant to  
8 the Lanterman-Petris-Short Act (Part 1 (commencing with Section  
9 5000) of Division 5 of the Welfare and Institutions Code), the  
10 prosecuting attorney shall prove, as an element of the crime, that  
11 a mental disorder or developmental or physical disability rendered  
12 the alleged victim incapable of giving legal consent.

13 (i) Any person who commits an act of sodomy, where the victim  
14 is prevented from resisting by an intoxicating or anesthetic  
15 substance, or any controlled substance, and this condition was  
16 known, or reasonably should have been known by the accused,  
17 shall be punished by imprisonment in the state prison for three,  
18 six, or eight years.

19 (j) Any person who commits an act of sodomy, where the victim  
20 submits under the belief that the person committing the act is the  
21 victim's spouse, and this belief is induced by any artifice, pretense,  
22 or concealment practiced by the accused, with intent to induce the  
23 belief, shall be punished by imprisonment in the state prison for  
24 three, six, or eight years.

25 (k) Any person who commits an act of sodomy, where the act  
26 is accomplished against the victim's will by threatening to use the  
27 authority of a public official to incarcerate, arrest, or deport the  
28 victim or another, and the victim has a reasonable belief that the  
29 perpetrator is a public official, shall be punished by imprisonment  
30 in the state prison for three, six, or eight years.

31 As used in this subdivision, "public official" means a person  
32 employed by a governmental agency who has the authority, as part  
33 of that position, to incarcerate, arrest, or deport another. The  
34 perpetrator does not actually have to be a public official.

35 (l) As used in subdivisions (c) and (d), "threatening to retaliate"  
36 means a threat to kidnap or falsely imprison, or inflict extreme  
37 pain, serious bodily injury, or death.

38 (m) In addition to any punishment imposed under this section,  
39 the judge may assess a fine not to exceed seventy dollars (\$70)  
40 against any person who violates this section, with the proceeds of

1 this fine to be used in accordance with Section 1463.23. The court,  
2 however, shall take into consideration the defendant's ability to  
3 pay, and no defendant shall be denied probation because of his or  
4 her inability to pay the fine permitted under this subdivision.

5 SEC. 6. Section 288 of the Penal Code is amended to read:

6 288. (a) Any person who willfully and lewdly commits any  
7 lewd or lascivious act, including any of the acts constituting other  
8 crimes provided for in Part 1, upon or with the body, or any part  
9 or member thereof, of a child who is under the age of 14 years,  
10 with the intent of arousing, appealing to, or gratifying the lust,  
11 passions, or sexual desires of that person or the child, is guilty of  
12 a felony and shall be punished by imprisonment in the state prison  
13 for three, six, or eight years.

14 (b) (1) Any person who commits an act described in subdivision  
15 (a) by use of force, violence, duress, menace, or fear of immediate  
16 and unlawful bodily injury on the victim or another person, is  
17 guilty of a felony and shall be punished by imprisonment in the  
18 state prison for 6, 12, or 16 years.

19 (2) Any person who is a caretaker and commits an act described  
20 in subdivision (a) upon a dependent person by use of force,  
21 violence, duress, menace, or fear of immediate and unlawful bodily  
22 injury on the victim or another person, with the intent described  
23 in subdivision (a), is guilty of a felony and shall be punished by  
24 imprisonment in the state prison for 6, 9, or 11 years.

25 (c) (1) Any person who commits an act described in subdivision  
26 (a) with the intent described in that subdivision, and the victim is  
27 a child of 14 or 15 years, and that person is at least 10 years older  
28 than the child, is guilty of a public offense and shall be punished  
29 by imprisonment in the state prison for one, two, or three years,  
30 or by imprisonment in a county jail for not more than one year. In  
31 determining whether the person is at least 10 years older than the  
32 child, the difference in age shall be measured from the birth date  
33 of the person to the birth date of the child.

34 (2) Any person who is a caretaker and commits an act described  
35 in subdivision (a) upon a dependent person, with the intent  
36 described in subdivision (a), is guilty of a public offense and shall  
37 be punished by imprisonment in the state prison for one, two, or  
38 three years, or by imprisonment in a county jail for not more than  
39 one year.

1 (d) In any arrest or prosecution under this section or Section  
2 288.5, the peace officer, district attorney, and the court shall  
3 consider the needs of the child victim or dependent person and  
4 shall do whatever is necessary, within existing budgetary resources,  
5 and constitutionally permissible to prevent psychological harm to  
6 the child victim or to prevent psychological harm to the dependent  
7 person victim resulting from participation in the court process.

8 (e) Upon the conviction of any person for a violation of  
9 subdivision (a) or (b), the court may, in addition to any other  
10 penalty or fine imposed, order the defendant to pay an additional  
11 fine not to exceed ten thousand dollars (\$10,000). In setting the  
12 amount of the fine, the court shall consider any relevant factors,  
13 including, but not limited to, the seriousness and gravity of the  
14 offense, the circumstances of its commission, whether the  
15 defendant derived any economic gain as a result of the crime, and  
16 the extent to which the victim suffered economic losses as a result  
17 of the crime. Every fine imposed and collected under this section  
18 shall be deposited in the Victim-Witness Assistance Fund to be  
19 available for appropriation to fund child sexual exploitation and  
20 child sexual abuse victim counseling centers and prevention  
21 programs pursuant to Section 13837.

22 If the court orders a fine imposed pursuant to this subdivision,  
23 the actual administrative cost of collecting that fine, not to exceed  
24 2 percent of the total amount paid, may be paid into the general  
25 fund of the county treasury for the use and benefit of the county.

26 (f) For purposes of paragraph (2) of subdivision (b) and  
27 paragraph (2) of subdivision (c), the following definitions apply:

28 (1) "Caretaker" means an owner, operator, administrator,  
29 employee, independent contractor, agent, or volunteer of any of  
30 the following public or private facilities when the facilities provide  
31 care for elder or dependent persons:

32 (A) Twenty-four hour health facilities, as defined in Sections  
33 1250, 1250.2, and 1250.3 of the Health and Safety Code.

34 (B) Clinics.

35 (C) Home health agencies.

36 (D) Adult day health care centers.

37 (E) Secondary schools that serve dependent persons and  
38 postsecondary educational institutions that serve dependent persons  
39 or elders.

40 (F) Sheltered workshops.

- 1 (G) Camps.
- 2 (H) Community care facilities, as defined by Section 1402 of
- 3 the Health and Safety Code, and residential care facilities for the
- 4 elderly, as defined in Section 1569.2 of the Health and Safety
- 5 Code.
- 6 (I) Respite care facilities.
- 7 (J) Foster homes.
- 8 (K) Regional centers for persons with developmental disabilities.
- 9 (L) A home health agency licensed in accordance with Chapter
- 10 8 (commencing with Section 1725) of Division 2 of the Health
- 11 and Safety Code.
- 12 (M) An agency that supplies in-home supportive services.
- 13 (N) Board and care facilities.
- 14 (O) Any other protective or public assistance agency that
- 15 provides health services or social services to elder or dependent
- 16 persons, including, but not limited to, in-home supportive services,
- 17 as defined in Section 14005.14 of the Welfare and Institutions
- 18 Code.
- 19 (P) Private residences.
- 20 (2) "Board and care facilities" means licensed or unlicensed
- 21 facilities that provide assistance with one or more of the following
- 22 activities:
  - 23 (A) Bathing.
  - 24 (B) Dressing.
  - 25 (C) Grooming.
  - 26 (D) Medication storage.
  - 27 (E) Medical dispensation.
  - 28 (F) Money management.
- 29 (3) "Dependent person" means any person who has a physical
- 30 or mental impairment that substantially restricts his or her ability
- 31 to carry out normal activities or to protect his or her rights,
- 32 including, but not limited to, persons who have physical or
- 33 developmental disabilities or whose physical or mental abilities
- 34 have significantly diminished because of age. "Dependent person"
- 35 includes any person who is admitted as an inpatient to a 24-hour
- 36 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
- 37 the Health and Safety Code.
- 38 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
- 39 subdivision (c) apply to the owners, operators, administrators,
- 40 employees, independent contractors, agents, or volunteers working

1 at these public or private facilities and only to the extent that the  
2 individuals personally commit, conspire, aid, abet, or facilitate any  
3 act prohibited by paragraph (2) of subdivision (b) and paragraph  
4 (2) of subdivision (c).

5 (h) Paragraph (2) of subdivision (b) and paragraph (2) of  
6 subdivision (c) do not apply to a caretaker who is a spouse of, or  
7 who is in an equivalent domestic relationship with, the dependent  
8 person under care.

9 SEC. 7. Section 288a of the Penal Code is amended to read:

10 288a. (a) Oral copulation is the act of copulating the mouth  
11 of one person with the sexual organ or anus of another person.

12 (b) (1) Except as provided in Section 288, any person who  
13 participates in an act of oral copulation with another person who  
14 is under 18 years of age shall be punished by imprisonment in the  
15 state prison, or in a county jail for a period of not more than one  
16 year.

17 (2) Except as provided in Section 288, any person over the age  
18 of 21 years who participates in an act of oral copulation with  
19 another person who is under 16 years of age is guilty of a felony.

20 (c) (1) Any person who participates in an act of oral copulation  
21 with another person who is under 14 years of age and more than  
22 10 years younger than he or she shall be punished by imprisonment  
23 in the state prison for three, six, or eight years.

24 (2) (A) Any person who commits an act of oral copulation when  
25 the act is accomplished against the victim's will by means of force,  
26 violence, duress, menace, or fear of immediate and unlawful bodily  
27 injury on the victim or another person shall be punished by  
28 imprisonment in the state prison for three, six, or eight years.

29 (B) Any person who commits an act of oral copulation upon a  
30 person who is under 14 years of age, when the act is accomplished  
31 against the victim's will by means of force, violence, duress,  
32 menace, or fear of immediate and unlawful bodily injury on the  
33 victim or another person, shall be punished by imprisonment in  
34 the state prison for 6, 12, or 16 years.

35 (C) Any person who commits an act of oral copulation upon a  
36 minor who is 14 years of age or older, when the act is accomplished  
37 against the victim's will by means of force, violence, duress,  
38 menace, or fear of immediate and unlawful bodily injury on the  
39 victim or another person, shall be punished by imprisonment in  
40 the state prison for 6, 9, or 11 years.

1 (D) This paragraph does not preclude prosecution under Section  
2 269, Section 288.7, or any other provision of law.

3 (3) Any person who commits an act of oral copulation where  
4 the act is accomplished against the victim's will by threatening to  
5 retaliate in the future against the victim or any other person, and  
6 there is a reasonable possibility that the perpetrator will execute  
7 the threat, shall be punished by imprisonment in the state prison  
8 for three, six, or eight years.

9 (d) (1) Any person who, while voluntarily acting in concert  
10 with another person, either personally or by aiding and abetting  
11 that other person, commits an act of oral copulation (1) when the  
12 act is accomplished against the victim's will by means of force or  
13 fear of immediate and unlawful bodily injury on the victim or  
14 another person, or (2) where the act is accomplished against the  
15 victim's will by threatening to retaliate in the future against the  
16 victim or any other person, and there is a reasonable possibility  
17 that the perpetrator will execute the threat, or (3) where the victim  
18 is at the time incapable, because of a mental disorder or  
19 developmental or physical disability, of giving legal consent, and  
20 this is known or reasonably should be known to the person  
21 committing the act, shall be punished by imprisonment in the state  
22 prison for five, seven, or nine years. Notwithstanding the  
23 appointment of a conservator with respect to the victim pursuant  
24 to the provisions of the Lanterman-Petris-Short Act (Part 1  
25 (commencing with Section 5000) of Division 5 of the Welfare and  
26 Institutions Code), the prosecuting attorney shall prove, as an  
27 element of the crime described under paragraph (3), that a mental  
28 disorder or developmental or physical disability rendered the  
29 alleged victim incapable of giving legal consent.

30 (2) Any person who, while voluntarily acting in concert with  
31 another person, either personally or aiding and abetting that other  
32 person, commits an act of oral copulation upon a victim who is  
33 under 14 years of age, when the act is accomplished against the  
34 victim's will by means of force or fear of immediate and unlawful  
35 bodily injury on the victim or another person, shall be punished  
36 by imprisonment in the state prison for 7, 13, or 17 years.

37 (3) Any person who, while voluntarily acting in concert with  
38 another person, either personally or aiding and abetting that other  
39 person, commits an act of oral copulation upon a victim who is a  
40 minor 14 years of age or older, when the act is accomplished

1 against the victim's will by means of force or fear of immediate  
2 and unlawful bodily injury on the victim or another person, shall  
3 be punished by imprisonment in the state prison for 7, 10, or 12  
4 years.

5 (4) This paragraph does not preclude prosecution under Section  
6 269, Section 288.7, or any other provision of law.

7 (e) Any person who participates in an act of oral copulation  
8 while confined in any state prison, as defined in Section 4504 or  
9 in any local detention facility as defined in Section 6031.4, shall  
10 be punished by imprisonment in the state prison, or in a county  
11 jail for a period of not more than one year.

12 (f) Any person who commits an act of oral copulation, and the  
13 victim is at the time unconscious of the nature of the act and this  
14 is known to the person committing the act, shall be punished by  
15 imprisonment in the state prison for a period of three, six, or eight  
16 years. As used in this subdivision, "unconscious of the nature of  
17 the act" means incapable of resisting because the victim meets one  
18 of the following conditions:

19 (1) Was unconscious or asleep.

20 (2) Was not aware, knowing, perceiving, or cognizant that the  
21 act occurred.

22 (3) Was not aware, knowing, perceiving, or cognizant of the  
23 essential characteristics of the act due to the perpetrator's fraud in  
24 fact.

25 (4) Was not aware, knowing, perceiving, or cognizant of the  
26 essential characteristics of the act due to the perpetrator's fraudulent  
27 representation that the oral copulation served a professional purpose  
28 when it served no professional purpose.

29 (g) Except as provided in subdivision (h), any person who  
30 commits an act of oral copulation, and the victim is at the time  
31 incapable, because of a mental disorder or developmental or  
32 physical disability, of giving legal consent, and this is known or  
33 reasonably should be known to the person committing the act,  
34 shall be punished by imprisonment in the state prison, for three,  
35 six, or eight years. Notwithstanding the existence of a  
36 conservatorship pursuant to the provisions of the  
37 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
38 5000) of Division 5 of the Welfare and Institutions Code), the  
39 prosecuting attorney shall prove, as an element of the crime, that

1 a mental disorder or developmental or physical disability rendered  
2 the alleged victim incapable of giving consent.

3 (h) Any person who commits an act of oral copulation, and the  
4 victim is at the time incapable, because of a mental disorder or  
5 developmental or physical disability, of giving legal consent, and  
6 this is known or reasonably should be known to the person  
7 committing the act, and both the defendant and the victim are at  
8 the time confined in a state hospital for the care and treatment of  
9 the mentally disordered or in any other public or private facility  
10 for the care and treatment of the mentally disordered approved by  
11 a county mental health director, shall be punished by imprisonment  
12 in the state prison, or in a county jail for a period of not more than  
13 one year. Notwithstanding the existence of a conservatorship  
14 pursuant to the provisions of the Lanterman-Petris-Short Act (Part  
15 1 (commencing with Section 5000) of Division 5 of the Welfare  
16 and Institutions Code), the prosecuting attorney shall prove, as an  
17 element of the crime, that a mental disorder or developmental or  
18 physical disability rendered the alleged victim incapable of giving  
19 legal consent.

20 (i) Any person who commits an act of oral copulation, where  
21 the victim is prevented from resisting by any intoxicating or  
22 anesthetic substance, or any controlled substance, and this condition  
23 was known, or reasonably should have been known by the accused,  
24 shall be punished by imprisonment in the state prison for a period  
25 of three, six, or eight years.

26 (j) Any person who commits an act of oral copulation, where  
27 the victim submits under the belief that the person committing the  
28 act is the victim's spouse, and this belief is induced by any artifice,  
29 pretense, or concealment practiced by the accused, with intent to  
30 induce the belief, shall be punished by imprisonment in the state  
31 prison for a period of three, six, or eight years.

32 (k) Any person who commits an act of oral copulation, where  
33 the act is accomplished against the victim's will by threatening to  
34 use the authority of a public official to incarcerate, arrest, or deport  
35 the victim or another, and the victim has a reasonable belief that  
36 the perpetrator is a public official, shall be punished by  
37 imprisonment in the state prison for a period of three, six, or eight  
38 years.

39 As used in this subdivision, "public official" means a person  
40 employed by a governmental agency who has the authority, as part



1 of that position, to incarcerate, arrest, or deport another. The  
2 perpetrator does not actually have to be a public official.

3 (l) As used in subdivisions (c) and (d), “threatening to retaliate”  
4 means a threat to kidnap or falsely imprison, or to inflict extreme  
5 pain, serious bodily injury, or death.

6 (m) In addition to any punishment imposed under this section,  
7 the judge may assess a fine not to exceed seventy dollars (\$70)  
8 against any person who violates this section, with the proceeds of  
9 this fine to be used in accordance with Section 1463.23. The court  
10 shall, however, take into consideration the defendant’s ability to  
11 pay, and no defendant shall be denied probation because of his or  
12 her inability to pay the fine permitted under this subdivision.

13 SEC. 8. Section 289 of the Penal Code is amended to read:

14 289. (a) (1) (A) Any person who commits an act of sexual  
15 penetration when the act is accomplished against the victim’s will  
16 by means of force, violence, duress, menace, or fear of immediate  
17 and unlawful bodily injury on the victim or another person shall  
18 be punished by imprisonment in the state prison for three, six, or  
19 eight years.

20 (B) Any person who commits an act of sexual penetration upon  
21 a child who is under 14 years of age, when the act is accomplished  
22 against the victim’s will by means of force, violence, duress,  
23 menace, or fear of immediate and unlawful bodily injury on the  
24 victim or another person, shall be punished by imprisonment in  
25 the state prison for 6, 12, or 16 years.

26 (C) Any person who commits an act of sexual penetration upon  
27 a minor who is 14 years of age or older, when the act is  
28 accomplished against the victim’s will by means of force, violence,  
29 duress, menace, or fear of immediate and unlawful bodily injury  
30 on the victim or another person, shall be punished by imprisonment  
31 in the state prison for 6, 9, or 11 years.

32 (D) This paragraph does not preclude prosecution under Section  
33 269, Section 288.7, or any other provision of law.

34 (2) Any person who commits an act of sexual penetration when  
35 the act is accomplished against the victim’s will by threatening to  
36 retaliate in the future against the victim or any other person, and  
37 there is a reasonable possibility that the perpetrator will execute  
38 the threat, shall be punished by imprisonment in the state prison  
39 for three, six, or eight years.

(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:

- (1) Was unconscious or asleep.

1 (2) Was not aware, knowing, perceiving, or cognizant that the  
2 act occurred.

3 (3) Was not aware, knowing, perceiving, or cognizant of the  
4 essential characteristics of the act due to the perpetrator's fraud in  
5 fact.

6 (4) Was not aware, knowing, perceiving, or cognizant of the  
7 essential characteristics of the act due to the perpetrator's fraudulent  
8 representation that the sexual penetration served a professional  
9 purpose when it served no professional purpose.

10 (e) Any person who commits an act of sexual penetration when  
11 the victim is prevented from resisting by any intoxicating or  
12 anesthetic substance, or any controlled substance, and this condition  
13 was known, or reasonably should have been known by the accused,  
14 shall be punished by imprisonment in the state prison for a period  
15 of three, six, or eight years.

16 (f) Any person who commits an act of sexual penetration when  
17 the victim submits under the belief that the person committing the  
18 act or causing the act to be committed is the victim's spouse, and  
19 this belief is induced by any artifice, pretense, or concealment  
20 practiced by the accused, with intent to induce the belief, shall be  
21 punished by imprisonment in the state prison for a period of three,  
22 six, or eight years.

23 (g) Any person who commits an act of sexual penetration when  
24 the act is accomplished against the victim's will by threatening to  
25 use the authority of a public official to incarcerate, arrest, or deport  
26 the victim or another, and the victim has a reasonable belief that  
27 the perpetrator is a public official, shall be punished by  
28 imprisonment in the state prison for a period of three, six, or eight  
29 years.

30 As used in this subdivision, "public official" means a person  
31 employed by a governmental agency who has the authority, as part  
32 of that position, to incarcerate, arrest, or deport another. The  
33 perpetrator does not actually have to be a public official.

34 (h) Except as provided in Section 288, any person who  
35 participates in an act of sexual penetration with another person  
36 who is under 18 years of age shall be punished by imprisonment  
37 in the state prison or in the county jail for a period of not more  
38 than one year.

39 (i) Except as provided in Section 288, any person over the age  
40 of 21 years who participates in an act of sexual penetration with

1 another person who is under 16 years of age shall be guilty of a  
2 felony.

3 (j) Any person who participates in an act of sexual penetration  
4 with another person who is under 14 years of age and who is more  
5 than 10 years younger than he or she shall be punished by  
6 imprisonment in the state prison for three, six, or eight years.

7 (k) As used in this section:

8 (1) "Sexual penetration" is the act of causing the penetration,  
9 however slight, of the genital or anal opening of any person or  
10 causing another person to so penetrate the defendant's or another  
11 person's genital or anal opening for the purpose of sexual arousal,  
12 gratification, or abuse by any foreign object, substance, instrument,  
13 or device, or by any unknown object.

14 (2) "Foreign object, substance, instrument, or device" shall  
15 include any part of the body, except a sexual organ.

16 (3) "Unknown object" shall include any foreign object,  
17 substance, instrument, or device, or any part of the body, including  
18 a penis, when it is not known whether penetration was by a penis  
19 or by a foreign object, substance, instrument, or device, or by any  
20 other part of the body.

21 (l) As used in subdivision (a), "threatening to retaliate" means  
22 a threat to kidnap or falsely imprison, or inflict extreme pain,  
23 serious bodily injury or death.

24 (m) As used in this section, "victim" includes any person who  
25 the defendant causes to penetrate the genital or anal opening of  
26 the defendant or another person or whose genital or anal opening  
27 is caused to be penetrated by the defendant or another person and  
28 who otherwise qualifies as a victim under the requirements of this  
29 section.

30 SEC. 9. Section 647.9 is added to the Penal Code, to read:

31 647.9. (a) Any person who is required to register pursuant to  
32 the Sex Offender Registration Act for a felony offense, who enters  
33 any park where children regularly gather without written  
34 permission, is guilty of a misdemeanor.

35 (1) If the person is on parole, written permission shall be  
36 obtained from the person's parole officer.

37 (2) If the person is not on parole, written permission shall be  
38 obtained from the chief administrative official of the park.

39 (b) Punishment for a violation of this section shall be as follows:

1 (1) Upon a first conviction, by imprisonment in a county jail  
2 not exceeding six months, or by a fine not exceeding five hundred  
3 dollars (\$500), or by both imprisonment and a fine.

4 (2) Upon a second conviction pursuant to this section, by  
5 imprisonment in a county jail for a period of not less than 10 days  
6 and not more than 6 months. In addition to imprisonment, a  
7 violation of this section punishable pursuant to this paragraph may  
8 also be punished by a fine not exceeding five hundred dollars  
9 (\$500). A defendant sentenced pursuant to this paragraph shall not  
10 be released on probation, parole, or any other basis, until he or she  
11 has served at least 10 days imprisonment in a county jail.

12 (3) Upon a third or subsequent conviction pursuant to this  
13 section, by imprisonment in a county jail for a period of not less  
14 than 90 days and not more than 6 months and a fine not exceeding  
15 five hundred dollars (\$500). A defendant sentenced pursuant to  
16 this paragraph shall not be released on probation, parole, or any  
17 other basis, until he or she has served at least 90 days imprisonment  
18 in a county jail.

19 (c) This section does not preclude or prohibit prosecution under  
20 any other provision of law.

21 SEC. 10. Section 667.61 of the Penal Code is amended to read:

22 667.61. (a) Except as provided in subdivision (j), (l), or (m),  
23 any person who is convicted of an offense specified in subdivision  
24 (c) under one or more of the circumstances specified in subdivision  
25 (d) or under two or more of the circumstances specified in  
26 subdivision (e) shall be punished by imprisonment in the state  
27 prison for 25 years to life.

28 (b) Except as provided in subdivision (a), (j), (l), or (m), any  
29 person who is convicted of an offense specified in subdivision (c)  
30 under one of the circumstances specified in subdivision (e) shall  
31 be punished by imprisonment in the state prison for 15 years to  
32 life.

33 (c) This section shall apply to any of the following offenses:

34 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)  
35 of Section 261.

36 (2) Spousal rape, in violation of paragraph (1) or (4) of  
37 subdivision (a) of Section 262.

38 (3) Rape, spousal rape, or sexual penetration, in concert, in  
39 violation of Section 264.1.

1 (4) Lewd or lascivious act, in violation of subdivision (b) of  
2 Section 288.

3 (5) Sexual penetration, in violation of subdivision (a) of Section  
4 289.

5 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision  
6 (c), or subdivision (d), of Section 286.

7 (7) Oral copulation, in violation of paragraph (2) or (3) of  
8 subdivision (c), or subdivision (d), of Section 288a.

9 (8) Lewd or lascivious act, in violation of subdivision (a) of  
10 Section 288.

11 (9) Continuous sexual abuse of a child, in violation of Section  
12 288.5.

13 (d) The following circumstances shall apply to the offenses  
14 specified in subdivision (c):

15 (1) The defendant has been previously convicted of an offense  
16 specified in subdivision (c), including an offense committed in  
17 another jurisdiction that includes all of the elements of an offense  
18 specified in subdivision (c).

19 (2) The defendant kidnapped the victim of the present offense  
20 and the movement of the victim substantially increased the risk of  
21 harm to the victim over and above that level of risk necessarily  
22 inherent in the underlying offense in subdivision (c).

23 (3) The defendant inflicted aggravated mayhem or torture on  
24 the victim or another person in the commission of the present  
25 offense in violation of Section 205 or 206.

26 (4) The defendant committed the present offense during the  
27 commission of a burglary of the first degree, as defined in  
28 subdivision (a) of Section 460, with intent to commit an offense  
29 specified in subdivision (c).

30 (5) The defendant committed the present offense in violation  
31 of Section 264.1, subdivision (d) of Section 286, or subdivision  
32 (d) of Section 288a, and, in the commission of that offense, any  
33 person committed any act described in paragraph (2), (3), or (4)  
34 of this subdivision.

35 (6) The defendant personally inflicted great bodily injury on  
36 the victim or another person in the commission of the present  
37 offense in violation of Section 12022.53, 12022.7, or 12022.8.

38 (e) The following circumstances shall apply to the offenses  
39 specified in subdivision (c):

1 (1) Except as provided in paragraph (2) of subdivision (d), the  
2 defendant kidnapped the victim of the present offense in violation  
3 of Section 207, 209, or 209.5.

4 (2) Except as provided in paragraph (4) of subdivision (d), the  
5 defendant committed the present offense during the commission  
6 of a burglary in violation of Section 459.

7 (3) The defendant personally used a dangerous or deadly weapon  
8 or a firearm in the commission of the present offense in violation  
9 of Section 12022, 12022.3, 12022.5, or 12022.53.

10 (4) The defendant has been convicted in the present case or  
11 cases of committing an offense specified in subdivision (c) against  
12 more than one victim.

13 (5) The defendant engaged in the tying or binding of the victim  
14 or another person in the commission of the present offense.

15 (6) The defendant administered a controlled substance to the  
16 victim in the commission of the present offense in violation of  
17 Section 12022.75.

18 (7) The defendant committed the present offense in violation  
19 of Section 264.1, subdivision (d) of Section 286, or subdivision  
20 (d) of Section 288a, and, in the commission of that offense, any  
21 person committed any act described in paragraph (1), (2), (3), (4),  
22 (6), or (7) of this subdivision.

23 (f) If only the minimum number of circumstances specified in  
24 subdivision (d), (e), or (k) that are required for the punishment  
25 provided in subdivision (a), (b), (j), (l), or (m) to apply have been  
26 pled and proved, that circumstance or those circumstances shall  
27 be used as the basis for imposing the term provided in subdivision  
28 (a), (b), (j), (l), or (m), whichever is greater, rather than being used  
29 to impose the punishment authorized under any other provision of  
30 law, unless another provision of law provides for a greater penalty  
31 or the punishment under another provision of law can be imposed  
32 in addition to the punishment provided by this section. However,  
33 if any additional circumstance or circumstances specified in  
34 subdivision (d), (e), or (k) have been pled and proved, the minimum  
35 number of circumstances shall be used as the basis for imposing  
36 the term provided in subdivision (a), (j), or (l), and any other  
37 additional circumstance or circumstances shall be used to impose  
38 any punishment or enhancement authorized under any other  
39 provision of law.

(g) Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any of the circumstances specified in subdivision (d), (e), or (k) for any person who is subject to punishment under this section.

(h) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section.

(i) For any offense specified in paragraphs (1) to (7), inclusive, of subdivision (c), or in subdivision (n), the court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.

(j) (1) Any person, *who is 18 years of age or older*, who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d) or (k), or under two or more of the circumstances specified in subdivision (e), upon a victim who is a child under 14 years of age shall be punished by imprisonment in the state prison for life without the possibility of parole.

(2) *Any person under 18 years of age who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d) or (k), or under two or more of the circumstances specified in subdivision (e), upon a victim who is a child under 14 years of age shall be punished by imprisonment in the state prison for 25 years to life.*

~~(2)~~

(3) Any person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e), upon a victim who is a child under 14 years of age shall be punished by imprisonment in the state prison for 25 years to life.

(k) Any person who is convicted of an offense specified in subdivision (c) upon a victim who is a child under 14 years of age and who, in the commission of the offense, inflicted ~~physical injury resulting in a traumatic condition as defined in subdivision (e) of Section 273.5~~ *bodily harm upon the victim* shall be punished pursuant to subdivision (j).



1 (l) Any person who is convicted of an offense specified in  
2 subdivision (n) under one or more of the circumstances specified  
3 in subdivision (d) or under two or more of the circumstances  
4 specified in subdivision (e), upon a victim who is a minor 14 years  
5 of age or older shall be punished by imprisonment in the state  
6 prison for life without the possibility of parole.

7 (m) Any person who is convicted of an offense specified in  
8 subdivision (n) under one of the circumstances specified in  
9 subdivision (e) against a minor 14 years of age or older shall be  
10 punished by imprisonment in the state prison for 25 years to life.

11 (n) Subdivision (l) and (m) shall apply to any of the following  
12 offenses:

13 (1) Rape, in violation of paragraph (2) of subdivision (a) of  
14 Section 261.

15 (2) Spousal rape, in violation of paragraph (1) of subdivision  
16 (a) of Section 262.

17 (3) Rape, spousal rape, or sexual penetration, in concert, in  
18 violation of Section 264.1.

19 (4) Sexual penetration, in violation of paragraph (1) of  
20 subdivision (a) of Section 289.

21 (5) Sodomy, in violation of paragraph (2) of subdivision (c) of  
22 Section 286, or in violation of subdivision (d) of Section 286.

23 (6) Oral copulation, in violation of paragraph (2) of subdivision  
24 (c) of Section 288a, or in violation of subdivision (d) of Section  
25 288a.

26 (o) The penalties provided in this section shall apply only if the  
27 existence of any circumstance specified in subdivision (d), (e), or  
28 (k) is alleged in the accusatory pleading pursuant to this section,  
29 and is either admitted by the defendant in open court or found to  
30 be true by the trier of fact.

31 (p) *As used in this section, "bodily harm" means any substantial*  
32 *physical injury resulting from the use of force that is more than*  
33 *the force necessary to commit an offense specified in subdivision*  
34 *(c).*

35 SEC. 11. Section 3000 of the Penal Code is amended to read:

36 3000. (a) (1) The Legislature finds and declares that the period  
37 immediately following incarceration is critical to successful  
38 reintegration of the offender into society and to positive citizenship.  
39 It is in the interest of public safety for the state to provide for the  
40 effective supervision of and surveillance of parolees, including

1 the judicious use of revocation actions, and to provide educational,  
2 vocational, family and personal counseling necessary to assist  
3 parolees in the transition between imprisonment and discharge. A  
4 sentence pursuant to Section 1168 or 1170 shall include a period  
5 of parole, unless waived, or as otherwise provided in this article.

6 (2) The Legislature finds and declares that it is not the intent of  
7 this section to diminish resources allocated to the Department of  
8 Corrections and Rehabilitation for parole functions for which the  
9 department is responsible. It is also not the intent of this section  
10 to diminish the resources allocated to the Board of Parole Hearings  
11 to execute its duties with respect to parole functions for which the  
12 board is responsible.

13 (3) The Legislature finds and declares that diligent effort must  
14 be made to ensure that parolees are held accountable for their  
15 criminal behavior, including, but not limited to, the satisfaction of  
16 restitution fines and orders.

17 (4) The parole period of any person found to be a sexually  
18 violent predator shall be tolled until that person is found to no  
19 longer be a sexually violent predator, at which time the period of  
20 parole, or any remaining portion thereof, shall begin to run.

21 (b) Notwithstanding any provision to the contrary in Article 3  
22 (commencing with Section 3040) of this chapter, the following  
23 shall apply:

24 (1) At the expiration of a term of imprisonment of one year and  
25 one day, or a term of imprisonment imposed pursuant to Section  
26 1170 or at the expiration of a term reduced pursuant to Section  
27 2931 or 2933, if applicable, the inmate shall be released on parole  
28 for a period not exceeding three years, except that any inmate  
29 sentenced for an offense specified in paragraph (3), (4), (5), (6),  
30 (11), (16), or (18) of subdivision (c) of Section 667.5, ~~or an offense~~  
31 ~~specified in paragraph (2) of subdivision (b) of Section 288,~~ shall  
32 be released on parole for a period not exceeding 10 years, unless  
33 a longer period of parole is specified in Section 3000.1.

34 (2) In the case of any inmate sentenced under Section 1168, the  
35 period of parole shall not exceed five years in the case of an inmate  
36 imprisoned for any offense other than first or second degree murder  
37 for which the inmate has received a life sentence, and shall not  
38 exceed three years in the case of any other inmate, unless in either  
39 case the parole authority for good cause waives parole and  
40 discharges the inmate from custody of the department. This

1 subdivision shall also be applicable to inmates who committed  
2 crimes prior to July 1, 1977, to the extent specified in Section  
3 1170.2.

4 (3) Notwithstanding paragraphs (1) and (2), and except as  
5 provided in subdivision (a) of Section 3000.1, in the case of any  
6 offense for which the inmate has received a life sentence pursuant  
7 to subdivision (b) of Section 209, if that offense was committed  
8 with the intent to commit a specified sexual offense, or Section  
9 667.61 or 667.71, the period of parole shall be 10 years.

10 (4) The parole authority shall consider the request of any inmate  
11 regarding the length of his or her parole and the conditions thereof.

12 (5) Upon successful completion of parole, or at the end of the  
13 maximum statutory period of parole specified for the inmate under  
14 paragraph (1), (2), or (3), as the case may be, whichever is earlier,  
15 the inmate shall be discharged from custody. The date of the  
16 maximum statutory period of parole under this subdivision and  
17 paragraphs (1), (2), and (3) shall be computed from the date of  
18 initial parole and shall be a period chronologically determined.  
19 Time during which parole is suspended because the prisoner has  
20 absconded or has been returned to custody as a parole violator  
21 shall not be credited toward any period of parole unless the prisoner  
22 is found not guilty of the parole violation. However, the period of  
23 parole is subject to the following:

24 (A) Except as provided in Section 3064, in no case may a  
25 prisoner subject to three years on parole be retained under parole  
26 supervision or in custody for a period longer than four years from  
27 the date of his or her initial parole.

28 (B) Except as provided in Section 3064, in no case may a  
29 prisoner subject to five years on parole be retained under parole  
30 supervision or in custody for a period longer than seven years from  
31 the date of his or her initial parole.

32 (C) Except as provided in Section 3064, in no case may a  
33 prisoner subject to 10 years on parole be retained under parole  
34 supervision or in custody for a period longer than 15 years from  
35 the date of his or her initial parole.

36 (6) The Department of Corrections and Rehabilitation shall meet  
37 with each inmate at least 30 days prior to his or her good time  
38 release date and shall provide, under guidelines specified by the  
39 parole authority, the conditions of parole and the length of parole  
40 up to the maximum period of time provided by law. The inmate

1 has the right to reconsideration of the length of parole and  
2 conditions thereof by the parole authority. The Department of  
3 Corrections and Rehabilitation or the Board of Parole Hearings  
4 may impose as a condition of parole that a prisoner make payments  
5 on the prisoner's outstanding restitution fines or orders imposed  
6 pursuant to subdivision (a) or (c) of Section 13967 of the  
7 Government Code, as operative prior to September 28, 1994, or  
8 subdivision (b) or (f) of Section 1202.4.

9 (7) For purposes of this chapter, the Board of Parole Hearings  
10 shall be considered the parole authority.

11 (8) The sole authority to issue warrants for the return to actual  
12 custody of any state prisoner released on parole rests with the  
13 Board of Parole Hearings, except for any escaped state prisoner  
14 or any state prisoner released prior to his or her scheduled release  
15 date who should be returned to custody, and Section 3060 shall  
16 apply.

17 (9) It is the intent of the Legislature that efforts be made with  
18 respect to persons who are subject to Section 290.011 who are on  
19 parole to engage them in treatment.

20 SEC. 12. Section 3000.1 of the Penal Code is amended to read:

21 3000.1. (a) (1) In the case of any inmate sentenced under  
22 Section 1168 for any offense of first or second degree murder with  
23 a maximum term of life imprisonment, the period of parole, if  
24 parole is granted, shall be the remainder of the inmate's life.

25 (2) Notwithstanding any other provision of law, in the case of  
26 any inmate sentenced under subdivision (a) or paragraph (1) of  
27 subdivision (b) of Section 288, Section 288.5, or Section 288.7,  
28 the period of parole, if parole is granted, shall be the remainder of  
29 the inmate's life.

30 (3) Notwithstanding any other provision of law, in the case of  
31 any inmate sentenced under Section 667.71 in which one or more  
32 of the victims of the offense was a child under 14 years of age, the  
33 period of parole, if parole is granted, shall be the remainder of the  
34 inmate's life.

35 (4) Notwithstanding any other provision of law, in the case of  
36 any inmate sentenced under Section 269, subdivision (c) of Section  
37 667.51 with a maximum term of life imprisonment, paragraph (2)  
38 of subdivision (j) of Section 667.61, or subdivision (m) of Section  
39 667.61, the period of parole, if parole is granted, shall be the  
40 remainder of the inmate's life.

1 (5) Notwithstanding any other provision of law, in the case of  
2 any inmate sentenced under Section 261, 262, 264.1, 286, 288a,  
3 or 289 in which one or more of the victims of the offense was a  
4 child under 14 years of age, the period of parole, if parole is  
5 granted, shall be the remainder of the inmate's life.

6 (b) Notwithstanding any other provision of law, when any person  
7 referred to in paragraph (1) of subdivision (a) has been released  
8 on parole from the state prison, and has been on parole  
9 continuously for seven years in the case of any person imprisoned  
10 for first degree murder, and five years in the case of any person  
11 imprisoned for second degree murder, since release from  
12 confinement, the board shall, within 30 days, discharge that person  
13 from parole, unless the board, for good cause, determines that the  
14 person will be retained on parole. The board shall make a written  
15 record of its determination and transmit a copy of it to the parolee.

16 (c) In the event of a retention on parole, the parolee shall be  
17 entitled to a review by the board each year thereafter.

18 (d) There shall be a hearing as provided in Sections 3041.5 and  
19 3041.7 within 12 months of the date of any revocation of parole  
20 to consider the release of the inmate on parole, and notwithstanding  
21 the provisions of paragraph (2) of subdivision (b) of Section  
22 3041.5, there shall be annual parole consideration hearings  
23 thereafter, unless the person is released or otherwise ineligible for  
24 parole release. The panel or board shall release the person within  
25 one year of the date of the revocation unless it determines that the  
26 circumstances and gravity of the parole violation are such that  
27 consideration of the public safety requires a more lengthy period  
28 of incarceration or unless there is a new prison commitment  
29 following a conviction.

30 (e) The provisions of Section 3042 shall not apply to any  
31 hearing held pursuant to this section.

32 SEC. 13. No reimbursement is required by this act pursuant to  
33 Section 6 of Article XIII B of the California Constitution because  
34 the only costs that may be incurred by a local agency or school  
35 district will be incurred because this act creates a new crime or  
36 infraction, eliminates a crime or infraction, or changes the penalty  
37 for a crime or infraction, within the meaning of Section 17556 of  
38 the Government Code, or changes the definition of a crime within  
39 the meaning of Section 6 of Article XIII B of the California  
40 Constitution.

1     SEC. 14. The provisions of this act are severable. If any  
2     provision of this act or its application is held invalid, that invalidity  
3     shall not affect other provisions or applications that can be given  
4     effect without the invalid provision or application.

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